Supreme Court of the United States

OCTOBER TERM, 1955

NO. 10

COMMONWEALTH OF PENNSYLVANIA,
Petitioner

v.

STEVE NELSON, Respondent

PETITION FOR REHEARING OF DECISION OF APRIL 2, 1956

EDWARD C. BOYLE
District Attorney of
Allegheny County, Pennsylvania
WILLIAM CLANEY-SMITH
Assistant District Attorney
ALBERT A. FIOK
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Attorney of Record

302 Court House
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gh not indicted for the crime of actual advocacy, may be
on this radical assumption, the only way to affirm these con-
of Mr. Justice Douglas shows, is to qualify drastically or
stablished "clear and present danger" rule. This the Court
reatly restricts the protections afforded by the First Amend-
r affirmance show that the chief reason for jettisoning the
fear that advocacy of Communist doctrine endangers the
Undoubtedly, a governmental policy of unfettered communi-
tail dangers. To the Founders of the Nation, however, the
free expression were worth the risk. They embodied this
Amendment's command that Congress "shall make no law
edom of speech, or of the press. . . ." I have always believed
ent is the keystone of our Government, that the freedoms it
best insurance against destruction of all freedom. At least
lm of public matters, I believe that the "clear and present
mark the furthermost constitutional boundaries of protected
no more than recognize a minimum compulsion of the Bill
California, 314 U. S. 252, 263.

rt exercises the power of judicial review of legislation, I cannot
nendment permits us to sustain laws suppressing freedom of
basis of Congress' or our own notions of mere "reasonable-
vaters down the First Amendment so that it amounts to little
on to Congress. The Amendment as so construed is not likely
e "safe" or orthodox views which rarely need its protection.
objection to the holding because, as Mr. Justice Douglas
ons the determination of a crucial issue of fact by the judge
Nor can I let this opportunity pass without expressing my
limited grant of certiorari in this case which precluded con-
st two other reasons for reversing these convictions: (1) the
natory selection of the jury panel which prevented trial before
ction of the community; (2) the record shows that one mem-
s violently hostile to petitioners before and during the trial.
ing what it now is, few will protest the conviction of the
There is hope, however, that in calmer times, when present
fears subside, this or some later Court will restore the First
the high preferred place where they belong in a free society.

ertisement has been prepared and sponsored by the
ned in the belief that more Americans should be aware
ove views, with which we are in agreement • ROGER
IN • STRINGFELLOW BARR • ZECHARIAH
• ALEXANDER MEIKLEJOHN • CLARENCE
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IEARING OF DECISION OF
RIL 2, 1956

upreme Court and
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ully prays that this Honorable
of its decision of April 2, 1956
se for the following reasons:

inion is believed to be in error in
d and ruled upon that portion of
arable counts of the indictment
arging criminal conduct with a
nd destroying by force and vio-
the Commonwealth of Pennsyl-
ernment of the United States of
een widespread mistaken public
jority decision has struck down
-two separate sovereign states
ons of the Pennsylvania Penal
they refer to unlawful acts di-
vernment as distinct from the
this is not done the prospects of
construction of state laws pro-
ubversion of state governments
s across the nation are assured.
ded that nowhere in the Federal
e found authority in Congress to
r reserved police power to make
throw at least their own govern-
The States of New Hampshire
ge 2, line 15).

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occurring within State borders.
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the majority of this Court
ce of a general federal law
an bar each of the States
it a crime to seek within
overthrow or destruction
advocate such a criminal
te such a crime? Can it be
National police force?

tself, examination of the
fact that while the defend-
ted in August 1950 it was
the Federal authorities in-
elson as shown by the tele-
Communist Headquarters
orkers in the basic indus-
a prime target for sabotage
enforcement should not re-
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nerica unavoidably involves
rnment, at least as we now

Defendant's speeche
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and violence. Included
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was so indicted, as to bo
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this Court conclude fro
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overthrow of the Govern
which the Supreme Co
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of Pennsylvania quashe
overthrow of the State
new trial was then belie
the issue of whether att
States include overthrow
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Nelson's malodorous act
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If this decision stan
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ision of April 2, 1956.

ring in the record, advo-
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ennsylvania. Defendant
Government of Pennsyl-
United States. Should
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opinion that it was only
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Pennsylvania was con-
that the Supreme Court
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he whole field of control
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of the President of the United States, because he in turn controls the Department of Justice and it in turn controls the activities of the Federal Bureau of Investigation. It is true that the F. B. I. could continue investigations, but *without subpoena power*. The decision whether prosecutions or investigations will be conducted then rests entirely with the Department of Justice, contrary to the Tenth Amendment.

While many of the State sedition laws lack uniformity and continuity is not always present, their existence nevertheless constitutes a very effective check and balance against such undesirable and unlimited authority in the Federal Government. These state laws and investigations thereunder will ensure detection and prosecution in many cases that otherwise would remain undetected or unenforced. Their helpfulness in suppressing subversive activities is undeniable.

2. Since public announcement of the decision in this case on April 2, 1956, there have been repeated public statements from members of Congress who were members in 1940 and who voted for the *Smith Act* to the effect that they then or now never intended supersession of state laws. These have included the author of the Smith Act himself. Since April 2, 1956, a number of bills have been introduced in both the House and the Senate of the United States, specifically designed to show plainly that Congress did not and does not intend to supersede state sedition laws and that the implication of intention to so supercede found by the majority in this case is in error. The conclusion in the majority opinion ascribing to a Congressional enactment in 1940 an intention to supersede existing state laws by impli-

on derived from legislation enacted ten and fourteen
rs later, resting in part upon statements of mem-
of the *executive* branch of the Federal Government,
disregard of the expressed briefed position of the
artment of Justice and is contrary to the plain lan-
ge of the debates in Congress prior to enactment of
Smith Act. It also fails to give legal significance to
saving clause generally applicable to Title 18, U. S.
e when recodified in 1948. It should be reversed.

3. The minority has concluded that in the respon-
ity of national and local governments to protect
nselves against sedition there is no "dominant in-
st." (Page 5, line 8) This is and must be true for
ultitude of reasons, the most compelling of which is
it is simply impossible to overthrow the govern-
t of the United States by force and violence without
overthrowing the government of each individual
e and destroying their duly elected United States
resentatives and United States Senators. *The*
es are equally and vitally concerned with the Fed-
Government in attempts to either overthrow their
government or the government of the United States.
le it is possible that there might be an attempt to
throw an individual state government without also
lving *per se* an attempt to overthrow the Federal
ernment, the converse is impossible. It is of the
t immediate and urgent concern to each state in
exercise of its reserved police powers to be permitted
roscribe conduct within its jurisdiction seeking to
throw the Federal Government by force and vio-
e, as well as conduct directed toward overthrow of
State Government itself.

Conclusion.

For the reasons set forth above, and in most grave solemn form, it is respectfully urged that a re-ring be granted and that upon such rehearing and rgument those in the majority reverse their position ne principal case for the safety, security and best rests of the entire nation. This petition has been ed by the Attorneys General of all of the States se names appear hereon who respectfully request opportunity to be heard orally by the Attorney eral of New Hampshire should this petition be nted.

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State of Florida

n for Rehearing of Decision of April 2, 1956.

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CERTIFICATE OF COUNSEL

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reby certify that the foregoing Petition for
is presented in good faith and not for delay
ricted to grounds specified in Rule 58 of the
is Honorable Court.

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